

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED
OCT 05 2016
Clerk, U.S. District Court
District Of Montana
Missoula

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

JACQUELINE DIANE ERGER,

Defendant/Movant.

Cause No. CR 15-016-M-DLC
CV 16-129-M-DLC

ORDER DENYING § 2255 MOTION
AND DENYING CERTIFICATE OF
APPEALABILITY

On September 30, 2016, Defendant Erger moved to vacate, set aside, or correct her sentence under 28 U.S.C. § 2255. Erger is a federal prisoner proceeding pro se. She asks the Court to resentence her in light of Amendment 794 to the United States Sentencing Guidelines. *See* Mot. § 2255 (Doc. 160) at 5, 13-14.

Amendment 794 broadened the range of circumstances supporting a downward adjustment for a defendant who plays a minor or role in the offense. *See* U.S.S.G. § 3B1.2 Application Note 3 (Nov. 1, 2015). The amendment went into effect on November 1, 2015. Erger was sentenced on May 25, 2016. Minutes (Doc. 149). The Guidelines applied at her sentencing included Amendment 794. Presentence Report ¶¶ 69; U.S.S.G. § 1B1.11; *see also, e.g.*, Presentence Report ¶¶ 46, 51-52, 58, 62-64 (describing conduct supporting Erger's designation as an

average participant).

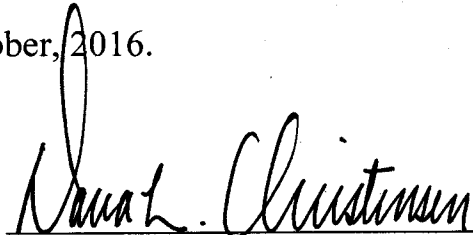
In addition, Erger was sentenced to the statutory mandatory minimum term of 60 months. 21 U.S.C. § 841(b)(1)(B)(viii); Presentence Report ¶ 159. Even if the offense level and guideline range had been lower, the sentence cannot be less than it is.

Erger is not entitled to relief. A certificate of appealability is denied as her motion makes no showing that she was deprived of a constitutional right. 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS HEREBY ORDERED as follows:

1. Erger's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 160) is DENIED;
2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Erger files a Notice of Appeal;
3. The Clerk of Court shall ensure that all pending motions in this case and in CV 16-129-M-DLC are terminated and shall close the civil file by entering judgment in favor of the United States and against Erger.

DATED this 5th day of October, 2016.



Dana L. Christensen, Chief Judge
United States District Court